

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Deborah Grodzicki	Team: Team # 1	CCRB Case #: 200507610	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/30/2005 11:58 PM	Location of Incident: in front of § 87(2)(b)	Precinct: 63	18 Mo. SOL 12/30/2006	EO SOL 12/30/2006	
Date/Time CV Reported Wed, 07/06/2005 6:58 AM	CV Reported At: Precinct	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 07/06/2005 6:58 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM James Murphy	14857	926095	063 PCT
2. POM Terrence Cane	29622	922068	063 PCT
3. SGT Joseph Walas	05351	894425	063 PCT
4. POM Robert Martinez	20291	922716	063 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Joseph Walas	Abuse: Sgt. Joseph Walas authorized the stop and question of § 87(2)(b)	§ 87(2)(b)
B.POM Terrence Cane	Abuse: PO Terrence Cane searched § 87(2)(b)	§ 87(2)(b)
C.POM James Murphy	Force: PO James Murphy used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Robert Martinez	Force: PO Robert Martinez used physical force against § 87(2)(b)	§ 87(2)(b)
E.POM James Murphy	Force: PO James Murphy used pepper spray against § 87(2)(b)	§ 87(2)(b)

Synopsis

On June 30, 2005, at approximately 11:59pm, § 87(2)(b) was stopped by Sgt. Joseph Walas, PO James Murphy, PO Robert Martinez, and PO Terrence Cane, who are currently assigned to the 63rd Precinct. [Allegation A] Upon approach, PO Murphy and PO Martinez told § 87(2)(b) that he was bicycling on the wrong side of the road and asked for his identification. § 87(2)(b) did not have his identification card with him. § 87(2)(b) stated that PO Cane immediately searched him. [Allegation B] After arguing with PO Murphy for a short while, § 87(2)(b) alleged that PO Murphy punched him in the face, “swept” his legs from under him, causing him to fall to the ground, and hit his head against the ground three times. [Allegation C] § 87(2)(b) alleged that PO Martinez assisted PO Murphy in bringing him down to the ground. [Allegation D] While he was on the ground PO Murphy pepper sprayed him [Allegation E] and PO Martinez handcuffed him. § 87(2)(b) obtained a minor contusion on the right side of his eye. He was treated for the pepper spray and was transported to § 87(2)(b) for further medical attention. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Summary of Complaint

Medical Records

On § 87(2)(b), EMS call § 87(2)(b) responded to the 63rd Precinct. § 87(2)(b) complained of a burning feeling on both of his eyes due to the mace. EMS washed his eyes out with sterile water. Once § 87(2)(b) arrived at § 87(2)(b) at approximately § 87(2)(b), § 87(2)(b) stated, “I was wrestled and the cops maced me to my eyes.” He also stated that he was punched in the face. (Encl. 7A-B)

§ 87(2)(b) was interviewed by the CCRB on July 29, 2005. (Encl. 8A-D) § 87(2)(b) is a § 87(2)(b)-old black male who resides at § 87(2)(b) § 87(2)(b) in Brooklyn. § 87(2)(b)

§ 87(2)(b)

On June 30, 2005 at approximately 11:59pm, § 87(2)(b) was riding his bicycle to the grocery store in hopes of buying a phone card for his father. As § 87(2)(b) was on the way to the store, he decided to return to his home because he wanted to take care of a dirty shirt he recently left on his floor; he feared the shirt would “stink up” his room. § 87(2)(b) was wearing an Indiana Pacers jersey and diesel jeans. As § 87(2)(b) reached § 87(2)(b) on § 87(2)(b) a black unmarked police vehicle with four plainclothes officers drove up next to him. § 87(2)(b) identified PO James Murphy and PO Robert Martinez from the arrest report and previous encounters. Sgt. Joseph Walas and PO Terrence Cane were later identified as the other two officers at the incident. A photo array reaffirmed the roles that each of the officers played.

Upon approach, PO Murphy asked § 87(2)(b) “Hey, what’s going on?” Uncertain as to why he was being stopped he replied, “What are you bothering me for?” As § 87(2)(b) “dropped his bike” and headed home, all four officers “jumped out of the car” and PO Cane approached him. PO Cane searched § 87(2)(b) by pulling up his shirt and putting his hand in his back pockets. PO Cane asked § 87(2)(b) if he had his identification card. § 87(2)(b) told him that he did not have any identification, for he was just going to the nearby grocery store. During this time, § 87(2)(b) argued with the officers, “Why are you guys bothering me? I’m just trying to go home.” After PO Cane searched § 87(2)(b) he asked him, “What’s the attitude for?” § 87(2)(b) replied, “What do you mean, what’s the attitude for? You guys are bothering me and I’m trying to go home.” PO Martinez told § 87(2)(b) that he was stopped for riding on the wrong side of the street. § 87(2)(b) stated that he was riding on the right side of the road. PO Murphy asked § 87(2)(b) to stop moving his hands. § 87(2)(b) placed his hands to the side with his palms up, and said, “You are not in danger. Look, there is nothing in my hands. What are you talking about?” At that moment, PO Murphy “swung,” with a closed

fist, at § 87(2)(b)'s left temple. In response, § 87(2)(b) backed up a little and said, "What's going on? There is no need for this." PO Martinez and PO Murphy grabbed § 87(2)(b) on his arms and "swept" him to the floor, face first. As § 87(2)(b) screamed for help, his friend § 87(2)(b) who had been standing in front of his home talking on the phone the entire time, rushed in to find § 87(2)(b)'s father. Approximately twenty neighbors entered the scene in response to § 87(2)(b)'s screams. At that point, § 87(2)(b) felt pressure on his head, as the two officers "tried to slam (his) face onto the floor." § 87(2)(b) crossed his forearms and placed them in front of his face as a means of protection from the floor. § 87(2)(b) stated PO Murphy and PO Martinez kept trying to put his arms behind his back and pressure his head onto the floor. § 87(2)(b) could no longer resist as PO Murphy and PO Martinez held his hands and dug their knees into his back and neck. Once § 87(2)(b) let them put his arms behind his back, PO Murphy hit the right side of his head, near the eye, against the ground three times. While § 87(2)(b)'s head was banged, he looked up and PO Martinez maced him. § 87(2)(b) sustained bruises across his right eye.

When § 87(2)(b) was taken off the ground, he noticed two marked police cars. § 87(2)(b) was handcuffed and escorted to a marked police vehicle by two uniformed officers, a tall black male and a short, black, thick woman. § 87(2)(b) and § 87(2)(b)'s father approached the officers and asked them what happened. The officers did not respond. As soon as § 87(2)(b) was placed in the car and taken back to the precinct, an EMT provided § 87(2)(b) with water for the mace, and took him to § 87(2)(b). PO Martinez and PO Cane were present at the hospital. After speaking with two doctors, § 87(2)(b) was not provided with any medical care. After approximately § 87(2)(b), PO Martinez and PO Cane transported § 87(2)(b) to the precinct. At approximately 9:00am, § 87(2)(b) was transported to Central Booking, where he remained for eight hours. § 87(2)(b) was charged with § 87(2)(a) 160.50.

Photo Array

A photo array was conducted on October 18, 2005. § 87(2)(b) viewed photographs of Sgt. Joseph Walas, PO Terrence Cane, PO Robert Martinez, and PO James Murphy. § 87(2)(b) stated that he recognized Sgt. Joseph Walas from the 63rd Precinct. § 87(2)(b) initially stated that Sgt. Walas was not present at that incident; however, after looking at the other three photographs, he believed Sgt. Walas to be the driver of the vehicle. § 87(2)(b) stated that PO Cane was present at the incident. He stated that PO Cane searched all of his pockets as soon he exited the police vehicle. Furthermore, § 87(2)(b) stated that PO Cane took him to the hospital with PO Martinez. § 87(2)(b) identified PO Martinez as the officer who pepper sprayed him. § 87(2)(b) identified PO Murphy as the first officer to address him and as the arresting officer. He stated that PO Murphy 'punched' him in the face and believed him to be the officer that hit his head against the floor. (Encl. 9A-G)

Results of Investigation

Witness Statement

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on September 20, 2005. (Encl. 11A-D) § 87(2)(b) is a § 87(2)(b)-old black male who resides in § 87(2)(b) in Brooklyn. § 87(2)(b) was § 87(2)(b). § 87(2)(b) is § 87(2)(b)'s neighbor and has known him all of his life. § 87(2)(b) states that they are not as close as they used to be.

On June 30, 2005 at approximately 11:58pm, § 87(2)(b) was standing in front of § 87(2)(b) in Brooklyn talking to his girlfriend on his cellular phone, when he observed § 87(2)(b) bike up his driveway on § 87(2)(b). § 87(2)(b) did not observe § 87(2)(b) ride his bicycle the wrong way. § 87(2)(b) stood a few feet from § 87(2)(b)'s driveway. A few seconds later, § 87(2)(b) observed four officers in an unmarked police vehicle drive up behind § 87(2)(b) and attempt to get his attention. The officer on the passenger side, later identified as PO James Murphy, asked § 87(2)(b) two times if he could talk to them for a few seconds. § 87(2)(b) asked the

officers, “What did I do?” The officers told § 87(2)(b) that he was riding his bike on the wrong side of his street. After a talking for a few minutes, PO James Murphy and an officer, later identified as PO Robert Martinez, exited the vehicle and approached § 87(2)(b) as he got off his bicycle and began to walk away. PO Murphy and PO Martinez told him that they could give him a summons for riding on the wrong side of the street. However, they did not write him a summons. § 87(2)(b) did not recall if the officers asked for § 87(2)(b)'s identification card. A few minutes later, the two other officers walked toward § 87(2)(b). As PO Murphy and § 87(2)(b) began to argue, PO Murphy got very close to § 87(2)(b)'s face. § 87(2)(b) began to put his hands up as a reflex. § 87(2)(b) asked PO Murphy, “Why are you so close to my face?” PO Murphy responded, “Why are you putting your hands up?” PO Murphy continuously asked § 87(2)(b) to put his hands down to his side. Since § 87(2)(b) did not comply with his orders, PO Murphy punched § 87(2)(b) on the right side of the face. As § 87(2)(b) tried to grab PO Murphy, § 87(2)(b) was “tackled” to the ground by PO Murphy and PO Martinez. § 87(2)(b) stated that § 87(2)(b) did not trip over his bike, for he was not of touching distance to it. As § 87(2)(b) began to move closer to the scene, PO Murphy told him, “Don’t even think about it. Don’t even think about helping your friend.” While he was on the ground, § 87(2)(b) was struggling to get up. When he was on the ground, either PO Murphy or PO Martinez kicked § 87(2)(b) on his side. After a few minutes, § 87(2)(b) yelled for § 87(2)(b) to get his father. § 87(2)(b) quickly went inside § 87(2)(b)'s home in search of his father.

Once § 87(2)(b) returned, § 87(2)(b) had already been maced. § 87(2)(b) was eventually handcuffed and taken to the 63rd Precinct. The other two officers at the scene approached § 87(2)(b) when he was taken to the ground; however, they did not have any physical contact with him at any point. § 87(2)(b) stated that both § 87(2)(b) and PO Murphy used profanity during the incident. § 87(2)(b) saw § 87(2)(b) the following day.

§ 87(2)(b)

§ 87(2)(b) was interviewed at his home on September 14, 2005. (Encl. 12A-C) § 87(2)(b) did not provide his exact age; he specified that he was over 65 years of age. § 87(2)(b) is a black male and resides at § 87(2)(b) § 87(2)(b) in Brooklyn. § 87(2)(b) is § 87(2)(b)'s neighbor; however, he does not have a personal relationship with him.

On June 30, 2005 at approximately 11:58pm, § 87(2)(b)'s niece, who currently resides in England, informed him that she heard a boy, identified as § 87(2)(b) screaming down the street. In response, § 87(2)(b) quickly went to his porch and observed four white officers on top of a boy laying face down on the sidewalk with his hands behind his back. § 87(2)(b) heard the boy scream, “Somebody please help me, somebody please help me.” § 87(2)(b) remained on his porch and shouted out, “You don’t need four big men like you to be on this one guy. Get off of him.” § 87(2)(b) observed the officers “handcuff § 87(2)(b) lift him up, throw him into the car and drive off.”

§ 87(2)(b) was standing on his porch approximately 100 feet from the location of the incident. There was a clear view to the location from where § 87(2)(b) was standing. § 87(2)(b) stated he did not observe any officer kick or mace § 87(2)(b) when he was on the ground. Neither did he observe any officer hit § 87(2)(b) when he was picked up off the ground.

Efforts to locate additional witness

§ 87(2)(b) did not wish to cooperate with the investigation. A canvass was conducted on September 14, 2005 between 6:00pm and 8:00pm. The investigator questioned numerous civilians residing in § 87(2)(b)'s neighborhood. The majority of the civilians did not witness the incident. § 87(2)(b) was the only civilian that provided a statement during the canvass.

Subject Officer Interviews

Robert Martinez

PO Robert Martinez was interviewed at the CCRB on August 23, 2005. (Encl. 14A-B) On June 30, 2005, PO Robert Martinez worked from 9:30pm to 6:05am and was assigned to Anticrime Unit. PO Martinez performed his duties in plainclothes in an unmarked RMP § 87(2)(b). PO Martinez was working with PO James Murphy, PO Terrence Cane, and Sgt. Joseph Walas. PO Martinez did not have any entries in his memo book regarding this incident.

On June 30, 2005, at approximately 11:58pm, PO Robert Martinez observed an individual, identified as § 87(2)(b) riding his bicycle the wrong way on § 87(2)(b) in Brooklyn. § 87(2)(b) was not wearing a helmet and did not have any lights or reflectors on his bicycle. PO Martinez and his three partners, PO James Murphy, PO Terrence Cane, and Sgt. Joseph Walas were in an unmarked vehicle. The four officers drove alongside § 87(2)(b) and attempted to stop him by saying, "Can I talk to you, police" at least ten times. PO Martinez did not recall who spoke to § 87(2)(b) while they were in the vehicle. PO Martinez did not recall how far away they were from § 87(2)(b). § 87(2)(b) ignored the officers, went through a red light, and turned onto § 87(2)(b) for approximately seven blocks. § 87(2)(b) went into the driveway of § 87(2)(b) and got off his bicycle. At that point, all the officers exited the vehicle and approached § 87(2)(b). PO Martinez observed an unidentified male, later identified as § 87(2)(b) standing in the driveway. PO Martinez did not recall having any interaction with § 87(2)(b). § 87(2)(b) turned his back toward the officers and put his hands on his front waist area. PO Martinez told § 87(2)(b) to turn around and show his hands several times. Since § 87(2)(b) did not respond, PO Martinez turned him around by grabbing his hands and attempted to frisk him for his safety. § 87(2)(b) resisted by moving his hands around and told PO Martinez, "Get the fuck away from me." PO Martinez continued to tell § 87(2)(b) "Listen, I just want to check and make sure you don't have anything you are not supposed to have." Unable to control § 87(2)(b) PO Martinez and PO Murphy took § 87(2)(b) down to the ground. PO Martinez could not recall the exact manner in which § 87(2)(b) was taken down to the ground. PO Martinez did not recall if § 87(2)(b)'s face hit the ground. § 87(2)(b) continued to resist by pushing his hands off the ground, not allowing PO Martinez to handcuff him. PO Martinez continued to tell § 87(2)(b) "Stop resisting, stop resisting, put your hands behind your back. All we want to do is handcuff you." § 87(2)(b) was not punched or kicked when he was on the ground. PO Murphy pepper sprayed § 87(2)(b) and PO Martinez handcuffed him soon after. After § 87(2)(b) was handcuffed, PO Martinez picked him up and requested another car to transport him to the precinct. § 87(2)(b) was searched after his arrest. EMS washed § 87(2)(b)'s eyes out at the precinct.

James Murphy

Criminal Complaint Report for arrest number § 87(2)(b)

§ 87(2)(b), § 87(2)(a) 160.50

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Arrest Report of arrest number § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

PO James Murphy was interviewed at the CCRB on August 23, 2005. (Encl. 18A-B) On June 30, 2005, PO James Murphy was assigned to 63rd Precinct Anticrime Unit from 9:30pm to 6:05am. PO Murphy performed his duties in plainclothes in an unmarked vehicle. PO Murphy was working with PO Robert Martinez, PO Terrence Cane, and SGT Joseph Walas. PO Murphy had a memo book entry addressing § 87(2)(b)'s arrest at 11:58pm in the vicinity of § 87(2)(b).

On June 30, 2005, at approximately 11:58pm, PO James Murphy observed an individual, identified as § 87(2)(b) riding a bicycle against traffic on § 87(2)(b). PO Murphy did not recall what § 87(2)(b) was wearing. § 87(2)(b) made an illegal left turn through a red light and continued to ride for approximately 75 yards, past four houses, while the four officers in the unmarked police vehicle, approximately six feet from § 87(2)(b) continuously yelled at § 87(2)(b) "Police, can we please talk to you?" § 87(2)(b) turned his head once or twice and continued to disregard the officers. When § 87(2)(b) reached § 87(2)(b), he got off his bicycle, turned his back toward the officers, and motioned both of his hand toward his waistband area. All of the officers got out of the car. PO Martinez approached § 87(2)(b) and turned him around by grabbing his arm and saying, "Hey, let me talk to you." § 87(2)(b) reacted by throwing his arms around and saying, "Don't touch me, get off me." At that point, PO Martinez attempted to frisk him. § 87(2)(b) would not allow the officers to touch him. Since § 87(2)(b) kept his hands up, the officers repeatedly asked § 87(2)(b) to "turn around and put his hands behind his back." Since § 87(2)(b) did not comply, PO Martinez and PO Murphy brought § 87(2)(b) down to the ground by "grabbing his arms, pushing him a little, and putting his face down onto the ground." PO Murphy did not recall if § 87(2)(b)'s face hit the ground. § 87(2)(b) kept pushing himself up and freeing his hands. PO Murphy and PO Martinez told § 87(2)(b) not to resist, but § 87(2)(b) kept on fighting back. After approximately one minute of struggling with § 87(2)(b) on the ground, PO Murphy let go of him and pepper sprayed him. After he was pepper sprayed, § 87(2)(b) was handcuffed and transported to the precinct. PO Murphy did not recall who picked § 87(2)(b) up off the ground. PO Murphy did not recall who handcuffed him since he was blinded by the pepper spray that got in his eyes. PO Murphy stated that § 87(2)(b) was not punched, hit, or kicked at any point. § 87(2)(b) received medical attention for the pepper spray and an abrasion that he had received.

PO Murphy observed another individual, later identified as § 87(2)(b) sitting in the driveway outside § 87(2)(b) immediately after PO Murphy exited the vehicle. PO Murphy did not recall having any interaction with § 87(2)(b).

PO Terrence Cane

PO Terrence Cane was interviewed by the CCRB on September 9, 2005. (Encl. 20A-B) On June 30, 2005, PO Terrence Cane was assigned to 63rd Precinct Anticrime Unit from 9:30pm to 6:05am. PO Cane performed his duties in plainclothes with PO James Murphy, PO Robert Martinez, and Sgt. Joseph Walas. PO Cane was assigned to an unmarked vehicle. PO Cane's memo-book entries indicate that PO Murphy arrested an individual at 11:58pm.

On June 30, 2005 at approximately 11:58pm, PO Terrence Cane was in an unmarked vehicle with PO James Murphy, PO Robert Martinez, and Sgt. Joseph Walas, when he observed a bicyclist, identified as § 87(2)(b) riding his bicycle against traffic and make an illegal left turn at a red light. The four officers in the unmarked vehicle drove a few feet away from § 87(2)(b) instructing him to stop. PO Cane did not recall any of the officers identify themselves as police officers when they were instructing him to stop. PO Cane could not recall which officer specifically asked § 87(2)(b) to stop. § 87(2)(b) acknowledged the officers but did not stop. § 87(2)(b) stopped as he approached his home at § 87(2)(b). At that point, all four officers exited the vehicle. PO Martinez approached § 87(2)(b) while PO Cane observed an individual, later identified as § 87(2)(b) standing on the sidewalk approximately five feet from him. PO Cane did not recall if any instructions were given to § 87(2)(b) during their approach. PO Martinez and PO Murphy were conversing with § 87(2)(b) however, PO Cane could not recall the exact statements made. PO Cane did not recall having a verbal interchange with § 87(2)(b) prior to his arrest. He speculates that he might have said, "Calm down." PO Cane did not know if there was any physical contact made between § 87(2)(b) and the officers during their initial interaction. PO Cane did not see § 87(2)(b) get frisked or searched prior to his arrest. PO Cane refocused his attention toward § 87(2)(b) when PO Cane noticed him get "agitated and throwing his

hands around.” At that point, PO Martinez and PO Murphy tackled § 87(2)(b) down to the ground. PO Martinez, PO Murphy, and § 87(2)(b) tripped over the bicycle as § 87(2)(b) was “tackled.” PO Cane did not see § 87(2)(b)’s face hit the ground. Since § 87(2)(b) was violently resisting, PO Cane assisted in the arrest by holding § 87(2)(b)’s legs down. § 87(2)(b) resisted by “kicking his legs and throwing his arms around.” Since the officers could not get his arms behind his back, PO Martinez pepper sprayed him. PO Cane did not observe any officers punch § 87(2)(b) at any point. § 87(2)(b) was handcuffed. PO Cane did not recall who handcuffed § 87(2)(b). PO Cane did not recall who took § 87(2)(b) off the ground. PO Cane did not observe any lacerations on § 87(2)(b) once he was handcuffed. PO Cane only recalled an additional RMP called to the scene as a means of taking § 87(2)(b) to the precinct.

After § 87(2)(b) was handcuffed, two individuals approached the officers in hopes of finding out what had happened. One of the individuals was § 87(2)(b) and the other was an elderly gentleman, identified as § 87(2)(b). PO Cane did not recall which officer the individuals spoke with. PO Cane accompanied § 87(2)(b) to the hospital. PO Cane remained in the hospital for approximately thirty minutes.

Sgt. Joseph Walas

Sgt. Joseph Walas was interviewed by the CCRB on September 19, 2005. (Encl. 22A-B) On June 30, 2005, Sgt. Joseph Walas was acting as the Anticrime Supervisor between 9:00pm and 5:44am. Sgt. Walas performed his duties in plainclothes with PO Martinez, PO Cane, and PO Murphy. Sgt. Walas was assigned to an unmarked black Chevy. Sgt. Walas’s memo-book entries indicate that at 11:55pm, a male was stopped for bicycling on the wrong side of the street. The individual placed his hands too close to the officer’s face and refused to comply with putting his hands behind his back. The individual fell over his bike. He was subsequently maced.

On June 30, 2005 at approximately 11:58pm, Sgt. Joseph Walas was driving with PO Murphy, PO Martinez, and PO Cane, when they observed an individual, identified as § 87(2)(b) riding on the wrong side of the street; eastbound on the North side of § 87(2)(b). § 87(2)(b) continued to ride on the wrong side of the street as he proceeded to go North on § 87(2)(b). Sgt. Walas stated that he did not observe § 87(2)(b) make any other traffic violations. As Sgt. Walas, PO Martinez, PO Murphy, and PO Cane drove up to the side of § 87(2)(b) they identified themselves as police officers and asked him to stop. Sgt. Walas could not recall which officer specifically asked § 87(2)(b) to stop. Sgt. Walas stated that they were approximately a car width away from § 87(2)(b) when they were driving alongside of him. § 87(2)(b) got off his bike and proceeded to walk away from the officers. The four officers exited the vehicle at approximately the same time and approached him. Sgt. Walas could not recall which officer approached him first. Sgt. Walas did not see where § 87(2)(b)’s hands were placed as he was walking away. Sgt. Walas did not recall if an officer physically turned § 87(2)(b) around. Sgt. Walas did not recall if § 87(2)(b) was asked for his identification. § 87(2)(b) asked the officers why he was being stopped. The officers stated that it was against the law to ride his bicycle on the wrong side of the street. § 87(2)(b) replied, “You have no reason to stop me” and became uncooperative by bringing his hands up toward his chest, placing them in front of PO Murphy’s face. PO Murphy informed § 87(2)(b) to put his hands down at least once and he did not comply. At that point, PO Murphy attempted to grab § 87(2)(b)’s hand. § 87(2)(b) tripped over the bicycle as a result of a brief struggle. Sgt. Walas stated that § 87(2)(b) lost his balance, but he was uncertain as to the specifics of how he fell. Once § 87(2)(b) was face down on the ground, he put his hands under his chest. The officers attempted to handcuff § 87(2)(b) as he refused to put his hands behind his back after being asked several times. Sgt. Walas could not specify whether all the officers were attempting to handcuff him. Sgt. Walas could only recall his role in the process; he stated that he handcuffed § 87(2)(b)’s left hand. Sgt. Walas did not recall any officer kick or punch § 87(2)(b) when he was on the ground. § 87(2)(b) was pepper sprayed since he was resisting his arrest and not cooperating with the officers’ orders. Sgt. Walas did not recall who specifically pepper sprayed § 87(2)(b). Sgt. Walas did not recall which officer was giving § 87(2)(b) orders during his arrest. Sgt. Walas stated that he did not have any verbal communication with § 87(2)(b) during the incident. Eventually, § 87(2)(b) was handcuffed and was brought back to the stationhouse. § 87(2)(b) was given medical attention for the pepper spray.

Sgt. Walas was uncertain if § 87(2)(b) was frisked prior to his arrest. Sgt. Walas stated that he did not observe a bulge on § 87(2)(b) at any point during the incident. Sgt. Walas stated that § 87(2)(b) was not punched or kicked at any point during the encounter. Sgt. Walas observed a male bystander standing near the incident. Sgt. Walas stated that he did not have any contact with the aforementioned individual. Sgt. Walas stated that he did not fear for his safety or that of PO Murphy.

Medical Records

The **Ambulance Call Report** indicated that § 87(2)(b)'s face and eyes were washed out with sterile water at the 63rd Precinct. Once § 87(2)(b) was transported to § 87(2)(b), the **Triage Initial Assessment's** objective assessment taken at § 87(2)(b) stated that he was alert and oriented. It also noted that he did not demonstrate any acute distress and did not show signs or symptoms of injuries to the face noted. However, the **Emergency Physician Record** obtained at approximately § 87(2)(b) noted mild swelling near the temple area of his right eye. Thus, the physician noted a contusion to § 87(2)(b)'s face and provided him with Tylenol. (Encl. 23A-J)

Police Documents

Arrest Photograph

This photograph illustrates mild swelling on the side of his right eye. (Encl. 24)

Sprint Report X15346

Sprint report X15346 indicates that on June 30, 2005 at 11:56pm § 87(2)(b) was arrested. At approximately § 87(2)(b), EMS (call number § 87(2)(b)) responded to the precinct and aided § 87(2)(b) with mace to the eyes. At § 87(2)(b), § 87(2)(b) was sent to § 87(2)(b) (Encl. 26A-B)

Command Log entry from the 69th Precinct regarding § 87(2)(b)'s arrest

The command log entry regarding § 87(2)(b)'s arrest indicates that on June 30, 2005 at approximately 11:58pm, § 87(2)(b) was arrested and charged § 87(2)(a) 160.50. § 87(2)(b)'s physical condition indicates that he was maced and obtained a laceration to his head. It also states that § 87(2)(b) was sent to § 87(2)(b) at § 87(2)(b) and returned at § 87(2)(b) on July 1, 2005. The arresting officer was PO James Murphy. (Encl. 27)

Criminal Conviction History for § 87(2)(b)

§ 87(2)(g)

CCRB History for § 87(2)(b)

§ 87(2)(b) does not have any prior complaints on file. (Encl. 5)

CCRB History for Sgt. Joseph Walas

Sgt. Walas, who has been employed with the NYPD for five years, has no previously substantiated CCRB allegations. (Encl. 1)

CCRB History for PO Terrence Cane

PO Cane, who has been employed with the NYPD for seven years, has no previously substantiated CCRB allegations. (Encl. 2)

CCRB History for PO James Murphy

PO Murphy, who has been employed with the NYPD for five years, has no previously substantiated CCRB allegations. (Encl. 3)

CCRB History for PO Robert Martinez

PO Martinez, who has been employed with the NYPD for seven years, has one substantiated CCRB allegation for discourtesy (200505713). He received a Command Discipline-A from the Department. (Encl. 4)

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) identified PO James Murphy and PO Robert Martinez from the arrest report. PO Murphy and PO Martinez identified PO Terrence Cane and Sgt. Walas as the other two officers who were present at the time of the incident. Once a photo array was conducted, § 87(2)(b) identified PO Murphy as the officer who “punched” him in the face. He also alleged that PO Murphy was the officer who attempted to bash his head against the floor at the time of his arrest. § 87(2)(b) identified PO Martinez as the officer who pepper sprayed him. However, PO Murphy admitted to pepper spraying § 87(2)(b). § 87(2)(b) identified PO Cane as the officer who allegedly searched his pockets. § 87(2)(b) did not specifically address any allegations against Sgt. Walas; § 87(2)(g)

Undisputed Facts

It is undisputed that § 87(2)(b) was stopped for riding on the wrong side of the street. It is also undisputed that § 87(2)(b) was arrested and pepper sprayed during the incident.

§ 87(2)(b), § 87(2)(g)

Credibility Assessment

§ 87(2)(b) § 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that PO Murphy punched him on the left side of his face. However, there were no contusions found on the left side of the face. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) also stated that his head was hit against the ground three times. However, the medical records only indicated a minor contusion on the right side of his head. § 87(2)(g)

§ 87(2)(b) initially stated that PO Cane pulled up his shirt and searched only his back pocket; however, during the photo array § 87(2)(b) stated that PO Cane searched all of his pockets. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) and § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

PO James Murphy, PO Robert Martinez, PO Terrence Cane, and Sgt. Walas

§ 87(2)(g) They both alleged that they attempted to frisk § 87(2)(b). Nevertheless, § 87(2)(b), § 87(2)(b), PO Cane, and Sgt. Walas did not address this allegation. § 87(2)(g)

§ 87(2)(g). Since PO Cane and Sgt. Walas stated that they were not as involved with § 87(2)(b) they were unable to provide as detailed a statement as the former two officers. § 87(2)(b), § 87(2)(g)

They also stated that § 87(2)(b) was pepper sprayed prior to being handcuffed. All of the officers denied the force and search allegations. § 87(2)(g)

Allegation A: Sgt. Joseph Walas authorized the stop and question of § 87(2)(b)

§ 87(2)(b) alleged that he was stopped unlawfully. He stated that he was bicycling on the correct side of the road. § 87(2)(b), § 87(2)(g)

Allegation B: PO Terrence Cane searched § 87(2)(b)

§ 87(2)(b) alleged that PO Cane searched him prior to his arrest. The four officers and § 87(2)(b) denied this allegation. § 87(2)(b), § 87(2)(g) During his initial statement, § 87(2)(b) stated that only his back pockets were searched; nevertheless, during his photo array, he alleged that all of his pockets were searched. § 87(2)(b), § 87(2)(g)

Allegation C: PO James Murphy used physical force against § 87(2)(b)

Allegation D: PO Robert Martinez used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Murphy punched him in the face and hit his face against the ground three times. § 87(2)(b) stated that PO Murphy punched him on the left side of his face, while § 87(2)(b) stated that he observed § 87(2)(b) being punched on the right side of his face. § 87(2)(b) did not sustain any injuries to the left side of his face. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) also alleged that PO Murphy and PO Martinez grabbed him by his arms and “swept” him to the floor. § 87(2)(b), § 87(2)(g)

Allegation E: PO James Murphy used pepper spray against § 87(2)(b)

§ 87(2)(b) alleged that PO Martinez used pepper spray against him. § 87(2)(g) PO Martinez and PO Murphy stated that PO Murphy pepper sprayed § 87(2)(b) § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date:

